

Bank of NH

v.

Town of Rye

Docket No.: 17960-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$301,700 (land \$157,500; buildings \$144,200) on a 3.71-acre lot with a bank (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) Mr. Lutter, the Taxpayer's tax representative, estimated the Property's market value at \$275,000 based on an analysis by both the income and comparable sales approaches;
- (2) the Property's renovations in 1996 did not significantly add to its value;

(3) the \$253,000 value in the parties' 1996 settlement agreement was not an accurate reflection of the value at that time because of extenuating circumstances pertaining to the then-pending permit approvals;

(4) the Town did not consider traffic count to be a factor and road traffic is relatively low at this location;

(5) the Town's building residual technique in its income approach reflects an incorrect academic rather than market perspective; and

(6) the 1996 renovations of \$250,000 included a significant number of items that could be considered personalty.

The Town argued the assessment was proper because:

(1) the Property is the only bank location in Rye;

(2) zoning and deed restrictions limit the Property to commercial use as a bank;

(3) the Town's comparable sales approach to valuation should receive the most weight of the several approaches and indicates a value of \$443,200;

(4) the Town's comparable sales are more reflective of the desirable location than the Taxpayer's comparable sales;

(5) the deed restriction (restricting use to "commercial banking purposes") should not affect the Property's highest and best use;

(6) the 1996 settlement agreement was negotiated between the parties and was not arrived at under the threat of site plan review;

(7) time adjusting the \$253,000-settlement agreement at 6% a year arrives at an indicated value

of \$284,000, which is higher than Mr. Lutter's estimate and does not take into account the \$250,000 renovations performed subsequent to the settlement; and

(8) because the Property is the only bank in Rye, the utilization of traffic counts as a locational adjustment is not valid because of the relatively high level of disposable income in Rye versus other higher traffic count areas.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$273,150 based on a market value finding of \$379,400 and the Town's 1998 equalization ratio of .72 ($\$379,400 \times .72$).

The parties submitted estimates of value by all three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 71 (10th ed. 1992).

While there are three approaches to value, not all three approaches are of equal import in every situation. Id. at 72; International Association of Assessing Officers, Property Appraisal and Assessment Administration 108 (1990). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). Given the evidence submitted in this appeal, we find the cost approach is the most appropriate approach to value for several reasons. First, the adjustments made by both Mr. Lutter and the Town's assessor, Mr. Promer, in their comparable sales and income approaches

lack credible market relationship and, thus, the board was unable to give their respective conclusions much weight. Second, the Property can be considered a special-purpose property because of its use restriction by deed to “commercial banking purposes” and the specialized bank improvements on the lot. The use of the cost approach to estimate market value is appropriate for special-purpose properties. Appraisal Institute, The Appraisal of Real Estate, 319 (10th ed. 1992).

Sales and Income Approaches

Despite the fact there are bank sales that can be analyzed by the sales approach, the board concludes the specialized improvements, deed restriction limiting the commercial use of the Property to banking and the high income demographics of Rye create a unique property that belies the comparability of the bank sales or leases submitted by either party. Because of the uniqueness of the Property’s location and development, any sales or leases utilized in the comparable sales or income approaches would have to be carefully examined and adjusted for location and other market factors. While Mr. Lutter attempted to do that in his report by adjusting for various factors (building size, type of construction, lot size, location and condition) on a percentage basis, the board finds the adjustments are inconsistent and not market related. For example, sale #1 located in Allenstown was given no locational adjustment because of similar traffic counts. While traffic count in some instances can be a guide for location adjustments, in this case, the demographics and higher disposable income of Rye versus Allenstown are more significant factors in determining a location adjustment. Mr. Promer testified his adjustments in the comparable sales approach were derived from a comparative

review of the assessment-record cards of the comparables and the Property. However, in reviewing several of the adjustments, the board finds this technique is suspect in that it inherently relies upon the accuracy of the data on the assessment-record cards and the ability to accurately extract market-related differences from the assessment-record cards. A review of Mr. Promer's appraisal indicates some adjustments were incorrect and result in questionable value indications.

Cost Approach

As a result, the principle of substitution¹ inherent in the cost approach suggests an appropriate method to value the Property is to estimate: 1) the cost to purchase a comparable lot in Rye with such a deed restriction; and 2) the cost to construct a similarly functioning bank building.

The board finds the best evidence of the Property's land value is Mr. Promer's estimate of \$187,100 contained on page 3 of Municipality Exhibit E. The deed restriction limits the Property's commercial highest and best use to that of banking and prohibits alternative commercial use available to other commercially-zoned properties. However, the board finds the deed restriction does not necessarily preclude possible residential use of the Property, if it were

¹ "The principle of substitution is basic to the cost approach. This principle affirms that a prudent buyer would pay more for a property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay." The Appraisal of Real Estate, Appraisal Institute, 11th ed., p. 336.

vacant. However, given the fact the Property is substantially improved as a commercial bank, the

board finds the land value of \$187,100 is reasonable by being slightly higher than residential value but less than unrestricted commercial values.²

The board gives no weight to Mr. Lutter's attempt to extract an excess land value by pairing Town land sales #1 and #3. Mr. Lutter was unable to testify as to any other differences between the sales that would need to be considered such as location, residential versus commercial, topography, etc.. Therefore, the board is unable to give any weight to the \$1,100 excess land value conclusion.

Mr. Lutter submitted no cost approach for the board to review. The board reviewed the assessment-record card containing the Town's depreciated replacement cost estimate for the bank and finds it reasonable and based on accurate calculations derived from Marshall Valuation Service. While not unmindful of the significant renovations the Taxpayer performed on the Property in 1996, estimating the replacement cost of the renovated Property as a whole arrives at a proper contributory value when either viewed from the perspective of a prospective purchaser or the principle of substitution. Both would recognize the contributory value of the building as it existed in 1998 and not necessarily its cumulative cost of construction and renovations over time. Consequently, the board finds the depreciated replacement cost value of the building to be

² The board recalls Mr. Promer testifying the equalized land assessment of nearly \$219,000 was low for a commercial lot of this size. However, other commercial lots do not have the restricted use the Property has.

\$192,300 (\$202,400 x physical depreciation of .95).

Totaling the land value estimate of \$187,100 and the depreciated building cost of \$192,300 results in an estimated market value of \$379,400 or an assessed value of \$273,150 (\$379,400 x .72).

If the taxes have been paid, the amount paid on the value in excess of \$273,150 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Mark Lutter, Representative for Bank of NH, Taxpayer; Michael L. Donovan, Esq., Counsel for the Town of Rye; and Chairman, Board of Selectmen of Rye.

Date: July 24, 2000

Lynn M. Wheeler, Clerk

Bank of NH

v.

Town of Rye

Docket No.: 17960-98PT

ORDER

This order responds to the “Town’s” August 22, 2000 motion for reconsideration (“Motion”) and the “Taxpayer’s” September 1, 2000 response (“Response”) to the Motion. For the reasons that follow, the board grants the Motion and amends its July 24, 2000 decision (“Decision”) by adding \$10,800 for paving and utility improvements to the board’s assessed value of \$273,150 resulting in a revised ordered assessment of \$283,950 for the “Property.” The board grants the Motion inasmuch as the points it raises indicated the board’s decision was erroneous in fact by not considering these improvements.

After reviewing the arguments submitted in the Motion and the Response, the board finds on balance the Town’s arguments are convincing and the assessed value for paving (pertaining to parking) and utility improvements should be added to the assessed value found in the Decision.

The board considered the Taxpayer’s argument that at least one of the Town’s sales

included utility improvements and, thus, the correlated land value inherently included such value. However, in re-analyzing the sales, the board found that even deducting the equalized value for those features from the sale price did not significantly change the resulting correlated land value. Further, as noted in the footnote on page 6 of the Decision, in addition to Mr. Promer's land sale calculation, he testified that commercial lots which (unlike the Property) had no restrictions had market values far in excess of the Property's equalized value. Thus, the board had additional evidence that its finding of the land value of \$187,100 was reasonable.

To this value should have been added the contributory value of paving and utility improvements. Certainly, a bank requires those improvements and their value should be included; otherwise, taxable real estate is omitted. Cf. 590 Realty Co. v. City of Keene, 122 N.H. 284, 286 (1982) (special features adding value to a property should be considered so that such property does not "entirely escape its just share of the burden of taxation"; quoting from Public Service Co. v. New Hampton, 101 N.H. 142, 146 (1957).

The \$10,800 number for paving and utility improvements is an assessed value; therefore, adding it to the board's assessed value of \$273,150 is appropriate and no equalization is needed.

If the taxes have been paid the amount paid on the value in excess of \$283,950 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

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Date: October 18, 2000

Lynn M. Wheeler, Clerk